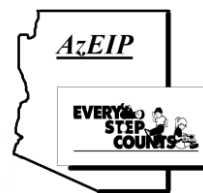


Chapter 7



PROCEDURAL SAFEGUARDS

Arizona Early Intervention Program

Table of Contents

| <u>Section</u> | <u>Page</u> |
|--|--------------------|
| 7.0.0 Procedural Safeguards Introduction | 2 |
| 7.1.0 Definitions | 2 |
| 7.2.0 Confidentiality | 4 |
| 7.3.0 Notice to Parents | 5 |
| 7.4.0 Records | 6 |
| 7.5.0 Consent to Disclose Records | 10 |
| 7.6.0 Destruction of Information | 12 |
| 7.7.0 Parental Consent and Ability to Decline Services | 13 |
| 7.8.0 Prior Written Notice | 14 |
| 7.9.0 Identification of the Parent and Use of Surrogate Parents | 18 |
| 7.10.0 Dispute Resolution | 21 |

7.0.0 Procedural Safeguards Introduction

Procedural safeguards represent one of the most important protections for children and families within the early intervention system. Federal regulations recognize that families need to be involved personally every step of the way. Providing families with the procedural safeguards and family rights helps ensure that families are involved in the decision-making process regarding services for their child. Rather than being a stand-alone activity, procedural safeguards are best offered to families within the process of participation.

DES/AzEIP implements the following policies and procedures and enforces failure to comply with these requirements and the requirements in IDEA, Part C through its dispute resolution processes and use of sanctions outlined in Chapter 2, General Supervision.

7.1.0 Definitions

7.1.1 Authority: 20 U.S.C. §1401(23); 34 C.F.R. Part 99; 34 C.F.R. §303.7, -.27, -.123, -.400, -.403, and -.449; 34 C.F.R. §99.3

7.1.2 Policy

1. AzEIP Service Providing Agencies - Those state agencies identified in A.R.S. § 8-652 that provide early intervention services under IDEA, Part C: Arizona Department of Economic Security and the Arizona State Schools for the Deaf and the Blind. The Arizona Department of Economic Security provides early intervention services through the DES, Arizona Early Intervention Program (DES/AzEIP) and the DES, Division of Developmental Disabilities (DES/DDD).

As used in this chapter, AzEIP Service Providing Agencies include all employees, contractors and other individuals associated with the AzEIP Service Providing Agency, who are involved with children and families, either directly or indirectly, referred to and/or enrolled in AzEIP.

2. Consent is when a parent:
 - A. has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language;
 - B. understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released;
 - C. understands that the granting of the consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).
3. Destruction means physical destruction of the record or ensuring that personally identifiable information is removed from a record so that the record is no longer personally identifiable.
4. Disclosure means to permit access to or the release, transfer, or other

communication of personally identifiable information contained in early intervention records, to any party, except the party that provided or created the record, by any means, including oral, written or electronic.

5. Early Intervention Record means all records regarding a child that are required to be collected, maintained, or used in AzEIP. Records include, but are not limited to, handwriting, print, computer data, video or audio, tape, film, microfilm and microfiche.
6. Native language, when used with respect to an individual who is limited English proficient or LEP means:
 - A. the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in B. below; and
 - B. for evaluations and assessments, the language normally used by the child, if determined developmentally appropriate by qualified personnel conducting the evaluation or assessment.

Native language when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

7. Parent is defined as:
 - A. a biological or adoptive parent of a child;
 - B. a foster parent, unless Arizona law, regulations, contractual obligations with an Arizona or local entity prohibit a foster parent from acting as a parent;
 - C. a guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health, or developmental decisions for the child (but not the State if the child is a ward of the State);
 - D. a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or a person who is legally responsible for the child's welfare; or
 - E. a surrogate parent who has been appropriately appointed.
8. Personally Identifiable Information includes, but is not limited to, the following:
 - A. the name of the child, the child's parent or other family member;
 - B. the address of the child or child's family;
 - C. a personal identifier, such as the child's or parent's social security number or child number;
 - D. a list of personal characteristics or other information that would make child's identity easily traceable; and/or
 - E. other information that would make the child's identity easily traceable.

7.2.0 Confidentiality

7.2.1 Authority: 20 U.S.C. §§1232g, 1439(a)(2), and 1442; 34 C.F.R. §303.401-402.

7.2.2 Policy

1. Parents referred to AzEIP are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with State and Federal laws.
2. AzEIP's confidentiality policies and procedures apply to the personally identifiable information of a child and that child's family that:
 - A. is contained in early intervention records collected, used, or maintained under AzEIP by DES or an AzEIP Service Providing Agency; and
 - B. applies from the point in time when the child is referred for early intervention services (to one of the AzEIP Service Providing Agencies) until the later of when DES or the AzEIP Service Providing Agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.
3. DES/AzEIP ensures the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained by AzEIP, which includes, the lead agency, DES, the AzEIP Service Providing Agencies and their providers, whether contracted, employed or otherwise utilized.
4. AzEIP's policy for protecting the privacy of children and families is aligned with the Family Educational Rights and Privacy Act (FERPA), as required under IDEA, 34 C.F.R. §303.401, and which is incorporated herein by reference.

7.2.3 Procedures

1. The AzEIP Service Coordinator provides, in writing and verbally, a parent's rights with regard to the confidentiality of early intervention records.
2. AzEIP Service Providing Agencies and contractors must protect personally identifiable information which is collected, used, or maintained concerning a child enrolled in AzEIP, the child's parent, or another family member by:
 - A. Keeping child/family files in a locked cabinet located in a semi-private or private location in an office;
 - B. Keeping the keys to the file cabinet in a discrete place;
 - C. Posting a list of the individuals who have access to the files on or next to the locked cabinets;
 - D. Keeping any fax machines in a private area;
 - E. Using fax coversheets for confidential faxes;
 - F. Keeping computers in a semi-private or private location in an office;
 - G. Ensuring all computers have password access only, if appropriate;

- H. Having a paper shredder easily accessible;
- I. Ensuring the availability of space for private/confidential telephone calls; and
- J. Ensuring the availability of space for private/confidential meetings.

7.3.0 Notice to Parents

7.3.1 Authority: 34 C.F.R. 303.404

7.3.1 Policy

1. DES must ensure notice to a parent of a child referred to AzEIP that is adequate to fully inform the parent about the confidentiality requirements in Section 7.2.0, including:
 - A. a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - B. a summary of the policies and procedures that DES and an Early Intervention Programs must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
 - C. a description of all the rights of parents and children regarding this information, including their rights under IDEA, Part C confidentiality provisions; and
 - D. a description of the extent that the notice is provided in the native languages of the various population groups in the State.
2. The AzEIP service coordinator ensures a parent is provided and has access to the AzEIP family rights handbook, which outlines AzEIP's policies and procedures about confidentiality.
3. Parents are notified annually, through the family rights handbook, of their right to:
 - A. Inspect and review their child's records, including the procedures to exercise this right;
 - B. Seek amendment to the records, including the procedures to exercise this right;
 - C. Consent to disclosures of personally identifiable information in their child's records; and
 - D. File a complaint with the United States of Department of Education, Family Policy Compliance Office concerning alleged failures to comply with the requirements under FERPA.

7.4.0 Records – Access, Amendment, Consent to Disclose, and Destruction

7.4.1 Authority: 20 U.S.C. §1232, et seq. (FERPA) and 34 C.F.R. §303.405 - 413.

7.4.2 Policy - Rights to Access of Records

1. A parent is entitled to inspect and review any early intervention records relating to their child that are collected, maintained, or used by DES/AzEIP or an AzEIP Service Providing Agency (referred to in this Section only as the “agency”). The agency must comply with the parent’s request to inspect and review records without unnecessary delay and before any IFSP meeting or IDEA, Part C dispute resolution proceedings, and in no case more than 10 calendar days after the request has been made.
2. The right to inspect and review early intervention records includes the right to:
 - A. a response from the agency to reasonable requests for explanation and interpretation of the early intervention records;
 - B. request that the agency provide copies of the early intervention records containing information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - C. have a representative of the parent inspect and review the early intervention records.
3. The agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.
4. If an early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only information relating to their child or to be informed of that specific information.
5. An agency must provide at no cost to parents a copy of each evaluation, assessment of the child, family assessment, and IFSP, as soon as possible after each IFSP meeting, but no later than ten (10) calendar days afterwards.
6. Reasonable fees may be charged for copying records, other than those described in 5. of this Section, requested by a parent as long as the fee does not effectively prevent the parent from exercising his or her right to inspect and review the records.
7. Fees may not be charged to a parent for the search and/or retrieval of the records.
8. For requests by parents for records when the child is no longer in AzEIP, the AzEIP Service Providing Agency (or its contractor) will take reasonable steps

to ensure the individual requesting the record has the legal authority to obtain the records.

9. DES and each AzEIP Service Providing Agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under IDEA, Part C (except access by parents and authorized representatives and employees of DES or the AzEIP Service Providing Agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.
10. DES/AzEIP ensures that it and the AzEIP Providing Agencies will provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

7.4.3 Procedures

1. The AzEIP Service Coordinator is responsible for explaining to a parent his or her rights to inspect, review, and have a copy of his/her child's early intervention records. This information is also included in the family rights handbook. A complete description of when and how the service coordinator explains rights to a parent is found in Chapters 3 and 4 of AzEIP policies and procedures.
2. The AzEIP service coordinator sends a parent copies of any evaluation, child assessment, family assessment and the IFSP (including any reviews) within ten (10) calendar days of written completion of the document reflecting those events.
3. A parent may request verbally or in writing that s/he would like to inspect or review the early intervention records of his or her child. If the request is verbal, the agency shall document the request in the child's record. The AzEIP Service Providing Agency to whom the request is directed must make the records requested available no more than ten (10) calendar days after the request has been made.
4. The AzEIP service coordinator advises parents at or near the transition from early intervention that the child's records will be kept for five years from the date the child exited early intervention and that the parent may receive a copy of the child's record at no charge before the exit.
5. A parent must request in writing, unless unable to do so, that s/he would like to obtain a copy of his/her child's early intervention records. The AzEIP Service Providing Agency to whom the request is directed must make available the records requested within 14 calendar days. Shorter periods of time will be considered on a case by case basis.
6. When the request is for records of a child who is no longer enrolled in early intervention, the AzEIP Service Providing Agency or designated contractor or subcontractor will undertake reasonable efforts to ensure the requestor is the early intervention parent who has the right to seek the records. Those efforts may include:

- A. Reviewing the child's record to identify the name of the person(s) who was the early intervention parent during the child's enrollment in early intervention;
 - B. Requesting identification from the person seeking the records;
 - C. Comparing the name and/or signature of the requestor with those found in the child's record;
 - D. If relevant, reviewing a custody order to determine who is the early intervention parent for the child; and
 - E. contacting Child Protective Services to determine who is now the early intervention parent.
7. AzEIP Service Providing Agencies and their contractors must keep within the child's file a record access and record release (disclosure) log, which is accessible to parents. When records are released, the following information must be recorded:
 - A. The date records are released;
 - B. Agency/person to whom the records were released;
 - C. The purpose of release;
 - D. Verification that consent is on file and up to date; and
 - E. The records that are released.
8. AzEIP Service Providing Agencies and their contractors must use a log to record the following information when there is a request to access information in a child's record:
 - A. The date records are accessed;
 - B. The name of the individual and agency, if relevant, accessing the information; and
 - C. The purpose for the request.

7.4.4 Policy – Amendment to Records

7.4.5 Authority: 34 C.F.R. §303.410-411

1. A parent who believes that information in the early intervention records collected, maintained, or used by DES or an AzEIP Service Providing Agency (hereinafter the "agency") is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the agency that maintains the information amend the information.
2. Upon receipt of a request to amend an early intervention record, the agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the record, but no later than 14 calendar days from the request.
3. If the agency refuses to amend the information as requested by the parent, it must inform the parent of the refusal, in writing, and advise the parent of the right to a hearing.

4. A parent may request a hearing to challenge the information in their child's early intervention records to ensure that it is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parents. The parent may request one of two hearings:
 - A. a due process hearing as set out in the policies and procedures found in Section 7.10.5; or
 - B. a hearing that meets the following requirements:
 - (1) held by DES/AzEIP within 30 calendar days after it has been requested;
 - (2) the parent is provided notice of the date, time, and place of the hearing within a reasonable time prior to the hearing;
 - (3) the hearing is conducted by an individual, including an official of DES/AzEIP, who does not have a direct interest in the outcome of the hearing;
 - (4) DES/AzEIP gives the parent a full and fair opportunity to present evidence relevant to the issues raised in the request to amend the record. The parent may, at his/her own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney;
 - (5) DES/AzEIP shall make its decision in writing within a reasonable time after the hearing; and
 - (6) the decision must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reason for the decision.

7.4.5 Procedures

1. If a parent wishes to amend a child's early intervention records, the AzEIP service coordinator lets the parent know that s/he must submit a request in writing, if possible, to the AzEIP Service Providing Agency that maintains the information, setting forth the specific parts of the child's records that the parent requests be amended and what the desired amendment is. If the parent is unable to make the request in writing, the AzEIP service coordinator shall assist the parent in making the request in another acceptable means, such as Braille, sign language, etc.
2. The agency receiving the request shall review the request and determine within 14 calendar days, whether to amend the record as requested.
3. If the agency agrees to amend the record, it shall amend the child's record. If the agency determines not to amend the record as requested, it will notify the parent in writing of the reasons for denying the request. It shall also notify the parent of his/her right to request a hearing, which must be submitted in writing

to DES/AzEIP within 30 calendar days from the date of the agency's letter of denial, unless an exception is granted by DES/AzEIP.

4. Upon receipt of a parent's request for a hearing, DES/AzEIP will contact the parent to ask which of the two hearing options they would like. Depending on which hearing is chosen, either DES/AzEIP or the due process hearing office will provide the parent notice of the date, time, and place reasonably in advance of the hearing.
5. The hearing shall be conducted by the Executive Director of DES/AzEIP, or designee, or through the due process hearing officer, as long as that person does not have a direct interest in the outcome of the hearing.
6. DES/AzEIP or the due process hearing officer shall make its decision in writing within a reasonable period of time after the hearing. The decisions must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.
7. If the decision is that the record should be amended, DES/AzEIP will direct the AzEIP service coordinator or his/her supervisor to so amend the record.
8. If the decision is that the record shall not be amended, the parent shall be notified within a reasonable time in writing along with notification of the parents' right to prepare a statement of disagreement to be kept in the child's records. The AzEIP service coordinator maintains the statement in the child's records for as long as the records are maintained per retention policy.
9. The statement of disagreement of the parent is maintained in the early intervention records as long as the records or contested portion is maintained according to AzEIP record retention policy. If the early intervention records or the contested portion are disclosed to any party, the statement must also be disclosed.

7.5.0 Policy - Consent to Disclose Records

7.5.1 Authority: 34 C.F.R. §303.401(d)(1) and -.414

1. Prior parental consent must be obtained before personally identifiable information is:
 - A. disclosed to anyone other than authorized representatives, officials, or employees of DES or an AzEIP Service Providing Agency, collecting, maintaining, or using the information under IDEA, Part C; or
 - B. used for any purpose other than meeting a requirement under IDEA, Part C.
2. Exceptions to the requirement of parental consent are:

- A. the automatic referral requirements when a child is potentially eligible for preschool special education and a referral is made using the PEA Notification/Referral form;
- B. those exceptions listed in FERPA, 34 C.F.R. §99.31, including but limited to:
 - (1) when a child moves and changes early intervention providers, the early intervention records may be sent from one early intervention provider to another without the parent's consent;
 - (2) disclosure to DES/AzEIP;
 - (3) disclosure to comply with a judicial order or lawfully issued subpoena **BUT ONLY AFTER** the AzEIP, the Service Providing Agency and/or contractor makes a reasonable effort to notify the parent in advance of compliance with the judicial order to allow the parent to seek protective action; or
 - (4) the disclosure is in connection with a health and safety emergency to appropriate authorities to protect the health or safety of the child or other individuals.
- 3. A consent to release (disclose) confidential information is only valid for 12 months.
- 4. When records are released, AzEIP Service Providing Agencies and contractors may only disclose personally identifiable information on the condition that the individual, to whom the information was disclosed, will not disclose the information to any other person without prior consent of the parent, unless as required by an exception under FERPA, such as a court order or subpoena.
- 5. When medical records or other "protected health information" is placed into a child's early intervention record, it is covered by the privacy protections of FERPA, and no longer covered by the Health Insurance Portability and Accountability Act (HIPAA). HIPAA expressly excludes those records that are part of a child's early intervention records in its definition of "protected health information." 45 C.F.R. §160.103.
- 6. DES and the AzEIP Service Providing Agencies protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.
- 7. One official at DES/AzEIP and at each AzEIP Service Providing Agency assumes responsibility for ensuring the confidentiality of any personally identifiable information.
- 8. DES/AzEIP ensures that all persons collecting or using personally identifiable information are trained and instructed on AzEIP policies and procedures regarding the confidentiality of this information.

9. DES/AzEIP and each AzEIP Service Providing Agency maintains for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information.

7.5.2 Procedures

1. The AzEIP Service Coordinator ensures the parent knows his/her rights for the protection of their personally identifiable information and obtains consent, where appropriate, prior to disclosing this information.
2. The AzEIP Service Coordinator must maintain a record of all requests for and disclosure of a child's early intervention records.
3. DES/AzEIP and the AzEIP Service Providing Agencies ensure a current list is available for public inspection of the names and positions of those employees within the agency who have access to personally identifiable information.
4. DES/AzEIP or an AzEIP Service Providing Agency must have an appropriate parental consent in order to provide documents to a law firm or other entity requesting records for a child in early intervention. See the AzEIP Consent to Share Early Information and Records for the required components.
5. A valid Court Order or Subpoena to produce records for a child in early intervention is an exception under IDEA, Part C and FERPA to the requirement that parental consent be obtained prior to releasing early intervention records.

Before any early intervention records may be released pursuant to a Court Order or Subpoena, the individual or program releasing the records must:

- A. provide written notice to the parent notifying the parent of the intended release; and
- B. allowing at least 10 business days to seek a protective order before the records are released.

7.6.0 Policy - Destruction of Information

7.6.1 Authority: 34 C.F.R. §303.416

1. The AzEIP Service Providing Agency must inform parents when personally identifiable information collected, maintained, or used in AzEIP is no longer needed to provide services to the child under IDEA, Part C, the GEPA provisions in 20 U.S.C. 1232f and EDGAR, 34 C.F.R. parts 76 and 80.
2. Subject to 1. above, personally identifiable information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and early intervention service

providers, and exit data (including year and age upon exit) may be maintained without time limitation.

7.6.2 Procedures

1. Early intervention records are kept by the AzEIP Service Providing Agency for five years from the date the child was last enrolled in early intervention, unless otherwise required by State law and reviewed by DES/AzEIP. When a child exits AzEIP, the AzEIP service coordinator explains the destruction policy to the parent and asks whether they would like a copy of the child's records.
2. A parent may make a request to DES/AzEIP in writing (or other means if unable to provide a written request) to have their child's early intervention records destroyed. DES/AzEIP will inform the parent that certain data elements from the record, as noted above in 2. will be maintained for five years from the date of the child's exit from AzEIP.
3. DES maintains copies of all or part of a child's early intervention records that it may have according to the Records and Retention Schedule filed with the Arizona State Library, Archives and Public Records. A copy of this schedule is available upon request to the DES/AzEIP office.

7.7.0 Policy - Parental Consent and Ability to Decline Services

7.7.1 Authority: 34 C.F.R. §420

1. DES/AzEIP ensures that parental consent is obtained before:
 - A. administering screening procedures to determine whether a child is suspected of having a developmental delay or disability;
 - B. all evaluations of a child and child and family assessments;
 - C. early intervention services are provided to the child;
 - D. public benefits or insurance or private insurance is used if such consent is required; and
 - E. the disclosure of personally identifiable information.
2. If a parent does not give consent under 1.A or 1.B above, DES/AzEIP makes reasonable efforts to ensure that the parent:
 - A. is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
 - B. understands that the child will not be able to receive the evaluation, assessment or early intervention services unless consent is given.
3. DES/AzEIP will not use due process procedures to challenge a parent's refusal to provide any consent that is required under 1. above.
4. The parents of a child referred to AzEIP:

- A. determine whether they, their child, or other family members will accept or decline any early intervention service in AzEIP at any time, in accordance with Arizona law; and
- B. may decline a service after first accepting it, without jeopardizing other early intervention services.

7.7.3 Procedures

1. The AzEIP service coordinator ensures that parents are fully informed of their rights to consent to and decline services.
2. The AzEIP service coordinator has the responsibility to ensure that the consent is translated, if necessary, and/or another mode of communication is provided so that the parent understands the consent being given.

7.8.0 Prior Written Notice

7.8.1 Authority: 20 U.S.C. §§1439(a)(6) and (7); 34 C.F.R. §§303.21 and 303.421.

7.8.2 Policy

1. Prior written notice (PWN) must be given to the parent of an eligible child a reasonable amount of time before AzEIP proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.
2. The notice must be in sufficient detail to inform the parent about:
 - A. The action that is being proposed or refused;
 - B. The reasons for taking the action;
 - C. All procedural safeguards available under the federal regulations, including a description of mediation, how to file a complaint and a due process hearing, and the timelines under those procedures.
3. The notice must be understandable to the general public and provided in the native language of the parent, unless it is clearly not feasible to do so.
4. If the native language or other mode of communication of the parent is not a written language, the service coordinator shall take steps to ensure that:
 - A. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - B. The parent understands the notice; and
 - C. There is written evidence that the requirements of this paragraph have been met.
5. If the parent is visually or hearing impaired, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).

7.8.3 Procedures

1. In general, the AzEIP service coordinator must provide PWN to a parent *after* the team makes its decisions and *before* the implementation of those decisions. (After the decision, Before the action.)
2. Written information of family rights and procedural safeguards is to accompany every PWN sent. (Note that if the parent has previously received a copy of the information, has been informed verbally of their procedural safeguards, **and** requests not to receive another copy, the AzEIP service coordinator does not have to give them another copy. The service coordinator must document this in writing in the child's file either by placing this information on the Prior Written Notice form or on the IFSP Team Page).

Use Consent for Screening – Prior Written Notice

- A. Prior written notice must be provided to a parent by the AzEIP service coordinator before a screening is conducted to determine if the child is suspected of having a developmental delay. The notice must include a description of the parent's right to request an evaluation at any time throughout the screening process.

The following are the circumstances when PWN is required concerning screening:

When there is a proposal to conduct a screening to determine if the child is suspected of having a developmental disability; a parent must receive PWN to determine whether or not to proceed with the screening. The Consent for Screening form satisfies both the PWN and parental consent requirements.

Use Prior Written Notice form

- B. When the AzEIP Service Providing Agency refuses to conduct a screening to determine if the child may have a developmental delay, PWN to the parent is required. This decision usually is made when discussions with the parent, observations, and available results from recent screenings do not support the need for a screening.

Use Prior Written Notice form

- C. If, at any time throughout the screening process, the parent requests an evaluation, PWN must be provided as set out in 3. below of this Section.

3. **Evaluations** - Prior written notice must be provided to a parent by the AzEIP service coordinator before any evaluation to determine the *initial or continuing* eligibility for AzEIP. (PWN is not required for an assessment, such as the annual assessment.)

The following are the circumstances when PWN is required concerning evaluations:

- A. When the AzEIP Service Providing Agency proposes to conduct an initial evaluation to determine a child's eligibility, a parent must receive PWN to determine whether or not to proceed with the evaluation. The Consent for Evaluation form satisfies both the PWN and parental consent requirements.

Use Consent for Evaluation – Prior Written Notice

- B. When the AzEIP Service Providing Agency refuses to conduct an initial evaluation to determine eligibility, PWN to the parent is needed. This decision usually is made when discussions with the parent, a review of available records, and the screening results do not support the need for an evaluation.

Use Prior Written Notice form

- C. When the AzEIP Service Providing Agency proposes or refuses to conduct an evaluation to determine whether a child continues to qualify for early intervention services, PWN to the parent is required.

Use Prior Written Notice form

EXAMPLES

- Lisa is referred to AzEIP after her pediatrician becomes concerned about her development. The team talks with Lisa's parents, conducts a screening and suggests that Lisa be evaluated to determine whether she qualifies for AzEIP. The Consent for Evaluation –PWN **is** required.
- Lisa is referred to AzEIP after her pediatrician becomes concerned about her development. The team talks with Lisa's parents, conducts a screening, reviews available records and proposes that Lisa does not need an evaluation. The PWN form **is** needed.
- After six months in AzEIP, Lisa's mother raises a concern about her slow progress toward learning to hold a bottle by herself. The team discusses Lisa's progress toward this outcome and proposes to have an occupational therapist **assess** Lisa. PWN is **not** needed.
- After a year of receiving services in AzEIP, Lisa has met all of her outcomes and the team feels that she is developing typically. Mom is uncertain about the progress, and the team proposes to **re-evaluate** Lisa to determine whether she continues to qualify for AzEIP. The PWN form **is** required.
- After a year of receiving services in AzEIP, Lisa's mother feels Lisa is doing well and asks for an evaluation to determine whether she still qualifies for AzEIP. Lisa has not achieved her IFSP outcomes and the ongoing assessments by the team members do not indicate that Lisa should be re-evaluated to determine eligibility. The PWN form **is** required.

4. **Eligibility** - The AzEIP service coordinator must provide prior written notice to a parent after the multidisciplinary team determines that a child is eligible, but before the team takes any further action. The PWN informs the parent of the reasons why the child was determined eligible or not eligible, and the options if there is disagreement with this determination.

The following are circumstances when PWN is needed in the context of an eligibility determination:

- A. A child is initially determined eligible for early intervention services, and the proposal to the parent is to proceed to the IFSP.

Use AzEIP Eligibility Letter (eligible)

- B. A child is evaluated initially and determined not eligible.

Use AzEIP Eligibility Letter (not eligible)

- C. After a child has been receiving services, s/he is re-evaluated and no longer qualifies for early intervention services.

Use AzEIP Eligibility Letter (not eligible)

5. **Individualized Family Service Plan (IFSP)** - Prior written notice is provided to a parent by the AzEIP service coordinator at the conclusion of the IFSP meeting (initial and continuing IFSP meetings) to confirm the decisions that were made during the meeting with the parent. After the IFSP team decision of outcomes and services, Before services are provided.

The following are circumstances when PWN is needed in the context of the IFSP:

- A. If the team, including the parent, agrees to all the decisions being made, the signature page of the IFSP (the "IFSP Team Page") may be used as the PWN when all the requirements are followed, as set forth in No.1 of the "IFSP Team Page."

Use IFSP Team Page of IFSP

- B. If the parent disagrees with the decisions of the other team members, the AzEIP service coordinator must complete the PWN form describing the action being proposed or refused and the reasons for them.

Use Prior Written Notice form

OTHER INSTANCES WHEN PWN IS NEEDED

- During the IFSP meeting, a service is requested by the parent and the IFSP team does not agree on the provision or location of this service and refuses to provide it. Use PWN form.
- During the course of services, the team proposes that a service should be changed (increased, decreased or terminated).

- If everyone on the team, including the parent, agrees to the change, the AzEIP service coordinator can, depending on the parent's preference, either: (1) hold an IFSP meeting and have the IFSP changed and the parent consent to the changes; or (2) note the change(s) on the IFSP and mail to the parent who consents to the change by signing the IFSP.
- If the Parent does not agree with the other team members' recommendations for a change, then a Prior Written Notice form must be completed and provided to the Parent.
- If the parent does not agree with the other team members' recommendations for a change, then a Prior Written Notice form must be completed and provided to the parent.
- At the annual IFSP meeting, the team proposes that the home is the most appropriate place to provide supports and services and refuses to provide services at the therapist's office as the parent requested.

Use Prior Written Notice form

7.9.0 Identification of the Parent and Use of a Surrogate Parent

7.9.1 Authority: 20 U.S.C. §1439(a)(5); 34 C.F.R. §§303.27; 422.

7.9.2 Policy

1. A parent is defined as:
 - A. a biological or adoptive parent of a child;
 - B. a foster parent, unless Arizona law, regulations, contractual obligations with an Arizona or local entity prohibit a foster parent from acting as a parent;
 - C. a guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);
 - D. a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - E. a surrogate parent who has been appropriately appointed.
2. It is the responsibility of the AzEIP Service Providing Agency to determine who is the child's parent to make early intervention service decisions for that child, including deciding whether to participate in AzEIP, consenting to screening, evaluation, assessment, the provision of services, and consenting to share early intervention records.
3. AzEIP policies and procedures protect the rights of children referred to AzEIP when:

- A. no parent, as defined above, can be identified;
 - B. after reasonable efforts, the AzEIP Service Providing Agency cannot locate a parent; or
 - C. the child is a ward of the State of Arizona.
4. When more than one individual is qualified to act as a parent for the child, the biological or adoptive parent who attempts to act as the parent is presumed to be the parent for purposes of making early intervention decisions on behalf of the child, unless:
- A. that person does not have legal authority to make educational decisions for the child (such as when parental rights have been terminated); or
 - B. there is a judicial order or decree specifying that some other individual to act as the parent for early intervention purposes.
5. If the biological or adoptive parent is not available, the AzEIP Service Providing Agency shall determine the parent in the following order of availability:
- A. a relative or stepparent with whom the child lives;
 - B. a foster parent;
 - C. a guardian appointed for the child, other than the State (or its employees/contractors, such as Child Protective Services);
 - D. a surrogate parent who meets the requirements in this section.
6. When Child Protective Services has legal custody of a child and the child has been removed from his/her home, a biological parent is not attempting to act as the early intervention parent when the AzEIP Service Providing:
- A. has made three (3) attempts to contact the biological parent (if a telephone number is available, calling at different times of day (at least one contact is during the evening hours) and if not telephone is available, then through the mail over the course of three (3) weeks; and
 - B. has contacted Child Protective Services (if the referral source) or the referral source, if not CPS, to gather additional information, if available, about the biological parent's last known telephone numbers or address, but still is not able to make contact with the parent; or
 - C. the attorney for the biological or adoptive parent or the parent states that they do not want to act as the early intervention parent; or
 - D. there is a No Contact Order as to the parent.
- If A. and B. or C. or D. is met, the AzEIP Service Providing Agency may identify another individual to act as the parent for the child under IDEA, Part C who meets the requirements of this Section.
7. The AzEIP Service Providing Agency is responsible for:
- A. determining whether a child needs a surrogate parent;

- B. assigning a surrogate parent to the child within 30 calendar days; and
 - C. when the child is a ward of the State or placed in foster care, must consult with the agency (such as Child Protective Services) that has been assigned care of the child.
8. In the case of a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the child's case provided that the requirements of a surrogate parent in this Section are met.
9. A surrogate parent is an individual who has been appropriately trained and is identified on the list of available persons to act as a surrogate parent. A surrogate parent:
- A. may not be an employee of DES or any other public agency or early intervention service provider that provides early intervention services, education, care, or other services to the child or any family member of the child; and
 - B. may not have a personal or professional interest that conflicts with the interest of the child s/he represents;
 - C. has knowledge and skills that ensure adequate representation of the child.
11. A person who is otherwise qualified to be a surrogate parent is not an employee of an agency solely because s/he is paid by the agency to serve as a surrogate parent.
12. A surrogate parent has the same rights as a parent in AzEIP and may represent the child in all matters, including:
- A. The screening, evaluation, and assessment of the child;
 - B. Development and implementation of the child's IFSP, including annual evaluations and periodic reviews;
 - C. The ongoing provision of early intervention services to the child; and
 - D. Any other rights established under IDEA, Part C, such as procedural safeguards.

7.9.3 Procedures

1. In those circumstances when the biological parent does not attempt to act as the "parent" but his/her rights have not been severed, and his/her whereabouts are known, the AzEIP service coordinator should discuss with the CPS Specialist (with appropriate consent) and the early intervention parent, strategies to involve the biological parent throughout the initial process, IFSP development and reviews, and/or the implementation of early intervention services, as appropriate.
2. A decision must be made as to whom will best represent the early intervention interests of a child: (i) when a referral is made by the Department of

Economic Security/Child Protective Services (CPS) or another referral source (such as the Regional Behavioral Health Authority) and the child is a ward of the State; or (ii) when a child enrolled in AzEIP becomes a ward of the State.

3. In the circumstances noted in 1. of this Section, above, it is the responsibility of the AzEIP service coordinator to contact the referral source (such as CPS Specialist) or others with appropriate consent to learn the details regarding the parent's whereabouts, the placement of the child, Orders of the Court, etc. in order to make a decision as to who should represent the child's interests and, if needed, how to gather additional information. This contact should be the first step when working with a child who is a ward of the State.
4. Once the facts have been gathered and an individual has been identified to represent the child's interests under IDEA, the AzEIP service coordinator will document the contact information for that person in the child's file, and ensure that all team members have the contact information. Documentation should include contacts with the CPS Specialist to identify the individual most appropriate to represent the child's early intervention interests and, as appropriate, attempts to contact the biological parents.
5. The AEIP service coordinator should proceed with the individual identified to represent the child's interest as the parent.
6. When a child who has been receiving supports and services through AzEIP no longer has a parent who can be located or identified, or the child becomes a ward of the State, the same procedures apply for determining who may represent the child's early intervention interests.
7. In all instances when a person is identified to represent the child's interests, this information should be documented by the AzEIP service coordinator in the child's file and all IFSP team members notified. With appropriate consent, the CPS Specialist should be notified as well.

7.10.0 Dispute Resolution

7.10.1 Authority: 20 U.S.C. §1439; 34 C.F.R. §§303.401-449.

DES/AzEIP is responsible for ensuring that procedures for the resolution of disputes are in keeping with the child's best interests and family's priorities. Parents shall be informed of all their options for dispute resolution and provided assistance, as appropriate, in accessing these options.

7.10.2 General Policy

1. DES/AzEIP ensures that families are informed of all their informal and formal dispute resolution options.
2. Informal dispute resolutions include working with the AzEIP Service Coordinator, his/her supervisor, or contacting the DES/AzEIP Office to seek

to resolve the concern without the use of formal procedures, as listed in 2. below of this Section.

3. Formal dispute resolution options through DES/AzEIP include:
 - A. Requesting mediation for parties to resolve disputes involving any matter under IDEA, Part C;
 - B. Filing a complaint regarding any violation of IDEA, Part C; and
 - C. Requesting a due process hearing to resolve a complaint with respect to a particular child when the AzEIP Service Providing Agency proposes, or refuses, to initiate or change the identification, evaluation, or placement of their child, or the provision of early intervention services to the child and family.
4. AzEIP service coordinators are responsible for ensuring that the parent understands these options and the procedures to exercise one or more of them. If appropriate, the service coordinator may help the parent access the various dispute resolution options.
5. If the child who is the subject of the dispute is also eligible for another Federal or State program, which has its own dispute resolution process, DES/AzEIP and the other agency/program will collaborate to determine jurisdiction based on the nature of the complaint.

7.10.3 Mediation

7.10.3.1 Authority: 20 U.S.C. §1415(e); 34 C.F.R. §303.431.

7.10.3.2 Policy

1. Mediation is voluntary and may only be used when both parties to the dispute agree to do so.
2. A party may seek mediation to resolve disputes involving any matter under IDEA, Part C, including matters arising prior to the filing of a due process complaint.
3. Mediation cannot be used as a mandatory preliminary step prior to any other administrative or legal recourse.
4. Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under IDEA, Part C.
5. Mediation is to be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and knowledgeable in the law related to early intervention.
6. DES ensures that it selects mediators on a random, rotational, or other impartial basis.
7. The State bears the cost of the mediation process, including the costs of mediation.
8. Parties resolving a dispute through mediation must sign a legally binding agreement describing the resolution and:

- A. states that all discussions that occurred during mediation are confidential and may not be used as evidence in any subsequent due process hearing procedure or civil proceeding in any Federal or State court; and
 - B. is signed by both the parent and a representative of DES who has the authority to bind DES.
9. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.
10. An individual who serves as a mediator:
- A. may not be an employee of DES or an AzEIP Service Providing Agency that is involved in the provision of early intervention services or other services to the child. However, a person who otherwise qualifies as a mediator is not an employee of DES or an AzEIP Service providing Agency solely because s/he is paid by the agency to serve as a mediator; and
 - B. must not have a personal or professional interest that conflicts with the person's objectivity.

7.10.3.3 Procedures

1. The following are the steps to initiate the mediation process:
- A. A written request is made to the Executive Director of DES/AzEIP.
 - B. The Executive Director of DES/AzEIP or a designee will obtain written agreement to the mediation process by the parties to the dispute.
 - C. Once agreement is obtained, DES will appoint a qualified, impartial mediator who is trained in effective mediation techniques. DES will access qualified mediators who are knowledgeable in laws and regulations related to the provision of early intervention services.
 - D. The DES shall ensure that each session of the mediation session is scheduled in a timely manner and held in a location convenient to the parties involved in the dispute.
 - E. The DES shall ensure that agreements reached by all parties through mediation will be recorded in a written mediation agreement.

7.10.4 Complaint

7.10.4.1 Authority: 34 C.F.R. §§303.432-434.

7.10.4.2 Policy

1. An individual or organization (including an individual or organization from another state) may file a written, signed complaint with DES/AzEIP alleging a violation of the requirements and regulations of IDEA, Part C and the facts on which the complaint is based.

2. Parents shall be given written information describing the procedures to resolve disputes.
3. Parents will be informed that they may file a formal complaint and use the informal complaint resolution process, mediation, or request a due process hearing at the same time. AzEIP service coordinators are responsible for ensuring that parents understand these procedures. If appropriate, they may help parents file a formal complaint.
4. Information on the procedures to resolve complaints will be widely disseminated to:
 - A. The AzEIP Service Providing Agencies and their contractors;
 - B. Family training, protection, and advocacy centers; and
 - C. Other appropriate individuals, agencies, institutions, and organizations.
5. DES will resolve all timely filed complaints meeting the requirements in 1. of this Section within 60 calendar days after the complaint is filed. A complaint is considered filed upon receipt by DES.
6. An extension to the 60-day timeline will be permitted if:
 - A. exceptional circumstances exist with respect to a particular complaint; or
 - B. the parent (or individual or organization if mediation is available to them under State procedures), DES, the AzEIP Service Providing Agency and/or early intervention services provider agree to extend the time to engage in mediation under Section 7.10.3.
7. Complaints alleging a failure by an AzEIP Service Providing Agency or contractor to implement a due process hearing decision must be resolved by DES/AzEIP.

7.10.4.3 Procedures

1. The following are the steps to initiate a complaint:
 - A. An individual or organization sends a written, signed complaint to the Executive Director of DES/AzEIP and includes:
 - (1) a statement that DES, an AzEIP Service Providing Agency or an early intervention services provider has violated a requirement of IDEA, Part C; and
 - (2) the facts on which the statement is based;
 - (3) the signature and contact information for the person filing the complaint; and
 - (4) if the statement alleges a violation about a specific child:
 - a. the name and address of the residence of the child;
 - b. the name of the early intervention services provider serving the child;
 - c. a description of the nature of the problem with the child, including facts relating to the problem; and

- d. a proposed resolution of the problem to the extent known and available to the person at the time the complaint is filed.
- B. The party filing the complaint must forward a copy of the complaint to the AzEIP Service Providing Agency or early intervention services provider serving the child at the same time the party files the complaint with DES/AzEIP. The party may request that DES/AzEIP forward the copy on their behalf.
- C. The Executive Director or designee will review the complaint to determine its validity for follow-up for further action. A complaint will be judged valid if the alleged violation occurred not more than one year before the date the complaint was received.
- D. The Executive Director or designee may provide the individual/agency about whom the complaint is made the opportunity to propose a resolution to the complaint.
- E. The Executive Director or designee will review all relevant information and will:
 - (1) Conduct an independent on-site investigation, if necessary; and
 - (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
- E. The Executive Director or designee will make an independent determination as to whether DES/AzEIP, the AzEIP Service Providing Agency or an early intervention service provider is violating a requirement or regulation of IDEA, Part C.
- F. The Executive Director of DES/AzEIP or designee will send a written decision to all parties. The decision shall address each allegation in the complaint and include:
 - (1) Findings of fact and conclusions; and
 - (2) The reasons for the final decision.
- G. When necessary, DES/AzEIP's decision will also include procedures for technical assistance activities and required corrective actions for an agency or provider to achieve compliance.
- H. In resolving a complaint in which it finds a failure to provide appropriate services, DES/AzEIP, pursuant to its general supervisory authority under IDEA, Part C, will address:
 - (1) How it will remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other

corrective action appropriate to the needs of the child and the child's parents; and

- (2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.
2. All investigations and resolutions must be completed within 60 calendar days of receipt of the complaint, unless an exception has been granted.
3. To request an extension, a party must verbally or in writing contact DES/AzEIP. DES/AzEIP will notify all parties if an extension is appropriate and include, where possible, the new date by which the complaint will be resolved.
4. If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, DES/AzEIP will set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60-calendar day timeline using the procedure described above.
5. If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties:
 - A. The due process hearing decision is binding on that issue; and
 - B. DES/AzEIP must inform the complainant to that effect.

7.10.5 Due Process Complaint and Hearing

7.10.5.1 Authority: 34 C.F.R. §§303.430; 435.

7.10.5.2 Policy

1. A parent may file a due process complaint to resolve a complaint with respect to a particular child related to the proposal or refusal to initiate or change the:
 - A. Identification of the child (screening);
 - B. Evaluation of the child (evaluation);
 - C. Placement of the child (eligibility determination); or
 - D. Provision of early intervention services to the child and family (IFSP services).
2. All due process hearings must be carried out at a time and place that is reasonably convenient to the parent.
3. The due process hearing procedures must be completed and a written decision mailed to each of the parties within 30 days after the appropriate AzEIP Service Providing Agency or DES/AzEIP receives the request for

the due process hearing. A hearing office may grant an extension beyond the 30-day period at the request of either party.

4. During the pendency of a due process complaint, unless DES/AzEIP and the parent of a child otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parent. If the complaint involves an application for initial services, the child must receive those services that are not in dispute.
5. In a due process proceeding, the parent has a right to:
 - A. Be accompanied and advised by an attorney and/or individual(s) with special knowledge or training with respect to early intervention services for eligible children;
 - B. Present evidence and confront, cross-examine, and compel for the attendance of witnesses;
 - C. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;
 - D. Obtain written or electronic, verbatim transcription of the hearing at no cost to the parent; and
 - E. Receive a written copy of the findings of fact and decision at no cost to the parent.

7.10.5.3 Procedures

1. To file a complaint, a parent must send a written, signed complaint to the Executive Director of DES/AzEIP which includes both of the following:
 - A. A statement concerning the matters related to AzEIP's proposal or refusal to initiate or change the:
 - (1) Identification of the child;
 - (2) Evaluation of the child;
 - (3) Placement of the child; or
 - (4) Provision of early intervention services to the child and family.
 - B. The facts of the situation.
2. An AzEIP Service Providing Agency must forward written complaints received by their agency to the DES within 24 hours of receiving the complaint. DES will coordinate with the AzEIP Service Providing Agency.
3. If the child who is subject of the hearing is also eligible for another Federal or State program, which has its own due process hearing procedures, DES/AzEIP and the other administrative entity will collaborate to determine jurisdiction based on the nature of the complaint. For all complaints alleging failure to comply with IDEA, Part C, DES will arrange the due process hearing according to IDEA, Part C.

4. The following are the steps to initiate a due process hearing:
 - A. A written request must be filed with the Executive Director of DES/AzEIP.
 - B. The Executive Director of DES/AzEIP or a designee shall appoint a trained, impartial hearing officer.
 - C. The hearing officer shall:
 - (3) Have knowledge about the provisions of IDEA, Part C and the needs of, and services available for, eligible children and their families;
 - (4) Not be employed by DES or an AzEIP Service Providing Agency involved in the provision of early intervention services or care of the child and family, except when a person who otherwise qualifies to conduct the hearing is paid by the agency solely to serve as a hearing officer; and
 - (5) Not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.
 - D. The hearing officer shall:
 - (1) Listen to the presentation of relevant viewpoints about the due process complaint;
 - (2) Examine all information relevant to the issues;
 - (3) Seek to reach a timely resolution of the due process complaint; and
 - (4) Provide a record of the proceedings, including a written decision.
 - E. Unless agreed upon by the parent and DES/AzEIP, there shall be no change made in the services received by the child prior to a final order by a Hearing Officer.
 - F. The decision made in a due process hearing is final.

7.10.6 Civil Action

7.10.6.1 Authority: 34 C.F.R. §303.438.

7.10.6.2 Policy

1. Any party aggrieved by the findings and decision regarding a due process complaint has the right to bring a civil action in State or Federal court.